

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

BOB McNEIL, an individual, on behalf of  
himself, and all others similarly situated,

Plaintiff,

v.

CAPITAL ONE BANK, N.A.,

Defendant.

CASE NO. 1:19-CV-00473-FB-RER

**PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY SUBMITTED IN  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT**

In further support of his Opposition to Defendant's Motion to Dismiss, Plaintiff submits the recent decision in *Perri v. Notre Dame Federal Credit Union*, No. 71C01–1909–PL–000332 (Ind. Cir. Ct. St. Joseph Cty. March 2, 2020).

The Order attached as Exhibit 1, partially denied a motion to dismiss. In that case, the plaintiff sued over the assessment of multiple NSF fees on the same item alleging breach of contract, including breaches of the implied covenant of good faith and fair dealing, and a state consumer protection claim. The court declined to dismiss the NSF theory, and reasoned:

The Court agrees with Plaintiff that ultimately these are the same item or transaction and they do not morph into a separate or new item simply because the third party presents the transaction for payment a second or third time. It is incumbent on Defendant to identify language in its contract with Plaintiff that unambiguously provides that a separate or additional NSF or overdraft fee could be imposed on the same transaction. The Agreement before the Court in this case does not do so.

Ex.1 at 6.

Dated: March 5, 2020

Respectfully submitted,

/s/ Steven M. Nathan

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*Attorneys for Plaintiff and the Putative Classes*

**CERTIFICATE OF SERVICE**

I certify that on March 5, 2020, a true and accurate copy of the foregoing Plaintiff's Notice of Supplemental Authority Submitted in Opposition to Defendant's Motion to Dismiss was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven Nathan